IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 836 of 2005

WITH

CIVIL APPLICATION NO. 937 OF 2005

M/s.Siddhivinayak Construction .. Appellant

versus

Ramavatar J. Pathak & ors. .. Respondents

APPEAL FROM ORDER NO. 837 of 2005

WITH

CIVIL APPLICATION NO. 980 OF 2005

M/s.Siddhivinayak Construction .. Appellant

versus ...

Ajay Ramavtar Pathak & ors. .. Respondents

APPEAL FROM ORDER NO. 889 of 2005

M/s.Siddhivinayak Construction .. Appellant

versus ...

Arun Ramavatar Pathak & ors. .. Respondents

APPEAL FROM ORDER NO. 890 OF 2005

M/s.Siddhivinayak Construction .. Petitioner

versus

Sindhumati Ramavatar Pathak & ors. .. Respondents

APPEAL FROM ORDER NO. 899 OF 2005

M/s.Siddhivinayak Construction .. Petitioner

versus

Ramavatar J. Pathak & ors. .. Respondents

A N D

APPEAL FROM ORDER NO. 890 OF 2005

WITH

CIVIL APPLICATION NO. 1018 OF 2005

M/s.Siddhivinayak Construction .. Petitioner

versus

Amit Ramavtar Pathak & ors. .. Respondents

...

Mr.Praveen Samdani with Mr Anirudha Joshi with Mr.Nivit Srivastava with Mr.Viraj Maniyar i/b M/s.Viraj Maniyar Associates for the appellants.

Mr. P.K.Dhakephalkar with Mr.R.S. Khatib and Mr.Rakesh Pande for the respondent no.1.

Mr.N.V. Walawalkar with Mrs.Geeta Jogalekar for BMC respondent no.2.

Mr.G.D.Utangale for the respondent no.3.

CORAM ; B.H. MARLAPALLE, J

DATED : 22nd September 2005

P.C.

1. All these appeals arise from separate orders passed by the Learned Judge of the City Civil Court disposing of Notices of Motion filed in six different suits i.e. S.C.Suit nos.2429, 2498, 2499,

2500, 2501 and 2502 of 2004. By the said impugned orders dated 6th July 2005, the Learned Judge of the City Civil Court has been pleased to grant identical protection to each of the plaintiffs in the following words:

> "Pending hearing and final disposal of the suit, the defendant nos..3 to 6 are hereby directed to ear mark, identify one commercial premises in Building no.3 admeasuring 225 sq.feet carpet area.
>
> . The defendant no.3 to 6 are hereby restrained from creating third party interest in the suit premises earmarked by them. This of course without prejudice to rights and contentions of both the parties on merit.
>
> . The Defendant nos.3 to 6 are directed to ear mark the said premises by filing an affidavit

within the period of three weeks from today."

2. The appellant has been pleaded as defendant no.3 in all the six suits and it is the developer for the development of the suit plot i.e. CTS no.515-A known as final plot no.14-A and 14-B of Town Planning Scheme, Borivali located at Sutar Wadi, M.G.Road, under the Slum Rehabilitation Scheme administered by the defendant no.2 i.e. the Slum Rehabilitation Authority created by the State Government under Maharashtra Slum Areas (Improvement, clearance and Redevelopment) Act 1971 (for short "The Slum Act"). The said plot of land belongs to the defendant no.1 i.e. the Municipal Corporation for Brihan Mumbai and the Planning Authority is the defendant no.2 for implementation of the Slum Rehabilitation Scheme. Hence, these appeals are being disposed by a common order.

3. The first suit was filed by Shri Ram Avtar, s/o Jagat Narayan Pathak in respect of the structure admeasuring about 1837 sq.ft wherein he was running a restaurant by name Amit Bar and which has been termed

as a bigger structure whereas the other five suits have been filed by the said Ram Avtar Pathak and four of his family members viz. his wife and three sons purportedly in respect of five separate small structures which they claim to be in their occupation and to have handed over to defendant no.1, pursuant to a separate agreement dated 29th August 2003. In respect of the first suit, the plaintiff claims to have signed an agreement with defendant no.3 on 20th December 2003 in respect of the bigger structure admeasuring 1837 sq.ft. The relief prayed in all the six suits is the same though arising from different structure. In all the suits, the Notice of Motion was heard for interim relief/temporary injunction and these motions have been disposed of and/or partly allowed in terms of the above quoted directions.

4. The learned counsel for the appellant defendant no.3 submitted that the right of the plaintiffs is not solely based on the agreements singed between the plaintiffs and defendant no.3 but it is subject to further actions of defendant nos.1 and 2 in as much as the defendant no.1 is required to decide the eligibility of the plaintiffs for

allotment of appropriate area - residential/ commercial, by including their names in Annexure II and the same to be forwarded to the defendant no.2 which in turn will issue the Letter of Intent (LOI) to the defendant no.3 for construction of the buildings. It was further submitted that the document viz. Annexure II relied upon by the plaintiffs in support of their claim and submitted before the trial Court is a forged document and unless the defendant no.1 decides the eligibility of the plaintiffs individually, the agreements signed between the plaintiffs and defendant no.3 cannot be acted upon. When the claim made is based on forged documents, there was no case to grant protection by way of interim relief to any of the plaintiffs, as per the learned counsel for the appellant. However, he clarified that as and when the defendant no.1 decides on the eligibility of the plaintiffs or any one of them and communicates the same to the defendant no.2, the defendant no.3 is required to act upon it and is bound by the agreement signed with the plaintiffs on 29th August 2003 or 20th December 2003 as the case may be.

5. Mr.Dhakephalkar, the learned counel appearing

for the plaintiffs on the other hand has supported the impugned order of protection and pointed out that the reply filed by the defendant no.3 before the trial Court is of mere denial so far as the agreement signed by it with the plaintiffs, consequent to which the possession of the respective structures have been taken over by the defendant no.3. The plaintiffs also deny that they have submitted any forged document in support of their claim before the trial Court and they emphasise that the list at Annexure II submitted by them along with the plaint was supplied by the defendant no.3 through its partners whose names have been mentioned in the plaint and thus, these documents have not been created by them.

6. The defendant nos.1 and 2 have filed their separate written statement/reply before the trial court and while explaining the procedure for the execution of a Slum Rehabilitation Scheme under the Slum Act, it has been stated that the documents relied upon by the plaintiff and the list of eligible persons is not the correct list and it has not originated from defendant no.1. In a way these defendants have supported the contentions of defendant no.3 that the list Annexure II dated 9th

October 2003 as relied upon by the plaintiffs is not a reliable document and it is a forged one. The defendant no.1 in its written statement has submitted that in the first lot, 58 structures in the Slum Colony were located on the part of the land admeasuring 1325.21 sq.m. from the said plot and as per the rules in force, 47 structures were found eligible whereas 11 were found non eligible and all these 47 eligible tenements were residential tenements. In the second lot, the defendant no.1 claims that in the plot admeasuring 5889.44 sq.m, from the suit plot there were total 308 structures in the slum colony and as per the rules in force, 213 structures were found eligible, 7 structures were found locked, and documents were not submitted in respect of the remaining 88 tenements. Thus, the eligibility of 95 tenement holders could not be decided by defendant no.1 and it forwarded the list of 308 structure holders to the defendant no.2 sometimes in April 2002. The defendant no.1 further claims that the cases of the remaining 95 structure holders were considered and the third list of Annexure II was forwarded to the defendant no.2 vide the letter dated 22th October 2003. It was stated that from these 95 hutment dwellers, 62 were found to

be eligible and remaining 33 had not produced any documents. The name of the first plaintiff i.e. Ram Avtar Pathak appears at Sr.no.66 in this third list prepared and submitted by defendant no.1 to defendant no.2 and the area shown against his name is 170.07 sq.m. His eligibility could not be decided as he did not produce the documents, as noted in the third Annexure-II.

7. The learned counsel for the defendant no.3 may be justified in his submissions that some of the observations made by the trial Court in the impugned order and based on Annexure II submitted by the plaintiffs are either not supported from the record or could not have been made when prima facie the said annexure appears to be unreliable. However, by that itself will not be a reason to interfere with the impugned order of temporary protection. The defendant no.1 has identified the structure of Amit Bar admeasuring 170.07 sq.m and the name of the first plaintiff, as noted above, appears at Sr.No.66 of the third Annexure II forwarded along with the letter dated 22nd October 2003 to defendant no.2. His eligibility could not be decided as per defendant no.1 as he did not produce the documents. As per the

documents produced on record before the trial Court, he claims that he purchased the said structure in the year 1994 form its earlier owners and thereafter he has been running a restaurant from the said premises. Licenses issued under the Shops and Establishment Act have been relied upon in support of his contentions that right from the year 1994, he was in possession of the said structure till it was handed over to the defendant no.3 and demolished. His claim cannot be discarded and it is for the defendant no.1 to examine the documents submitted before the trial Court and decide his eligibility at the earliest possible. It needs to be noted at this stage that the eligibility of the first defendant in respect of the structure he has handed over cannot be compared with and limited to the area which has been considered by the trial Court on par with the other five suits because clause no.18 of the agreements dated 29th August 2003 does not find place in the agreement dated 20th December 2003. The area for which the first plaintiff is entitled to in the rehabilitation scheme is also to be decided by defendant no.1 and 2 notwithstanding the area mentioned in the order passed by the trial Court and impugned before this Court.

8. As far as the other plaintiffs are concerned, the defendant no.3 has not disputed agreements with four of them and in each agreement, the area of the respective hutment has been stated. So far as the last plaintiff is concerned where the agreement is disputed, during the trial of the suit, the said plaintiff may have an opportunity to make good on that requirement. The learned counsel for the defendant no.3 emphasised that the names of these five plaintiffs do not find place in the second and third lists of Annexure II forwarded by defendant no.1 to defendant no.2 and therefore, the order of protection granted to them is required to be vacated. I am not impressed by these submissions. It is required to be noted that as per the individual agreements, these plaintiffs were in possession of a specific dwelling which has been handed over to defendant no.3 and these agreements were signed on 29th August 2003. The contentions of the defendant no.1 that they were not the tenement holders when it prepared the list of 308 slum dwellers and therefore, their claim cannot be considered, does not carry force as at present, moreso when the defendant no.3 developer has identified each of the dwelling and its area has been mentioned in the respective agreements

dated 29th August 2003. The defendant nos.1 and 2 shall have to enquire into the claims of the remaining five plaintiffs on the basis of the agreements signed between them and defendant no.3 as well as the documents they may submit during the enquiry. Obviously in the intervening period, the protection granted by the trial Court must be continued. The defendant nos.1 and 2 are public bodies and their acts in Slum Rehabilitation Scheme are not limited to any contractual obligations. Their acts must conform to the requirements of public interest and they must ensure that every claimant's case is examined by giving an opportunity of hearing to such claimants.

9. In the premises, the impugned order passed in the First Appeal and the other orders passed in the remaining five appeals do not call for any interference and in fact they are equitable orders. The defendant no.3 will have to comply with those orders in the manner stated by the trial Court.

. The appeals must therefore fail at the threshold and they are hereby dismissed in limine. The defendant No.1 is hereby directed to decide the

eligibility of the plaintiffs expeditiously.

. Civil Applications do not survive.

B.H. MARLAPALLE, J